(S)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL No. 69 OF 2007 Single Bench

MISCELLANEOUS APPEAL UNDER XLIII RULE 1(r) OF CODE OF CIVIL PROCEDURE 1908

APPELLANT
PLAINTIFF

Shyam Kumar Narang, aged 36 years, S/o Late Shri H. R. Narang, Resident Of behind Kalimandir, Kali Nagar, Pandritarai, Raipur District Raipur (Chhattisgarh)

V E R S U S

RESPONDENTS
DEFENDANTS

1. Smt.Jyothi Jathi, aged about 55 years, W/o Dilip Kumar Jathi,

2. Shri Dilip Kumar Jathi, S/o Late Hiralal Jathi, aged about 62 years,

Both residents of behind Anmol Complex, Awanti Vihar, Raipur, District Raipur (Chhattisgarh)

3. Sri Rawatpura Sarkar, Lok Kalyan Trust, Rawatpuradham Tahsil Lahar, District Bhind Through Managing Trustee/ Secretary Atul Kumar Tiwari S/o Late Kailashs Chand Tiwari, R/o Mukut Nagar, Raipur (Chhattisgarh)

4. State of Chhattisgarh through Collector, Raipur (CG)

P.N. No. 137/07
Presented by Shri Ramkrishna Dubey
dated 10.4.07

MISCELLANEOUS APPEAL UNDER XLIII RULE 1(r) OF CODE OF CIVIL PROCEDURE 1908

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(51)

मामला क्रमांक M.A.NO. 097 **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14.02.2007 Shri Ashish Shrivastava, counsel for the appellant. Heard on admission. The appellant is aggrieved by an order dated 30.12.2006 passed by the XIV[th] Additional District Judge (F.T.C.) Raipur in Civil Suit No. 22 A/2006 whereby the application filed by the appellant under Order 39 Rule 1 & 2 C.P.C. was dismissed. The appellant/plaintiff had pleaded that the defendants No. 1 & 2 had agreed to sell the suit lands @ 3,90,000/- per acre and had received advance of Rs. 1,50,000/- as per agreement executed between the parties on 30.6.2005. In the plaint, date of agreement was mentioned as 3.6.2005. It was further pleaded that the defendants No. 1 & 2 received an additional sum of Rs. 2,00,000/- on 7.10.2005 and a sum of Rs. 5,00,000/- on 9.11.2005 as part consideration. Under clause 4 of the agreement, the sale deed was to be got executed on or before 31.1.2006. Suit lands were not mutated in the name of defendants No. 1 and 2 on the date of agreement. The defendants No. 1 & 2 instead of executing the sale deed in favour of the plaintiff executed three registered sale deeds of the suit lands in favour of and delivered possession to the defendant No. 3 on 17.10.2006 for total consideration of Rs.24,35,000/-. The plaintiff filed civil suit on 25.11.2006 praying for specific performance of the contract and for a permanent injunction to restrain the defendant No. 3 from altering the structure of the suit lands and for maintaining the status quo. An application under Order 39 Rule 1 & 2 of C.P.C. was also filed making a prayer to that effect.	

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(57)

मामला क्रमांक M.A. No. 0905 सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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The defendants resisted the application and contended that since the plaintiff had failed to perform his part of the contract in terms of the agreement, he was not entitled to the relief prayed for. The learned XIV[th] Additional District Judge (FTC) Raipur although found the existence of a prima facie case in favour of the plaintiff, it dismissed the application under Order 39 Rule 1 & 2 filed by the appellant /plaintiff on the ground that time was the essence of the contract and the plaintiff had failed to get the sale deed executed within the period stipulated in the agreement. It further held that since the defendant No.3 had already purchased the suit land before the filing of suit for a huge consideration of Rs.24,35,000/- and was put in possession thereof the plaintiff would not suffer any irreparable loss if injunction was refused because even if the defendant No.3 did any construction over the suit land he would do so at his own peril and if the plaintiff would succeed in the suit the plaintiff would be entitled to vacant possession of the suit land. It also took into consideration the undertaking given by the defendant No.3 that it would not alienate any part of the suit land till disposal of suit.

The sole contention of the learned counsel for the appellant/plaintiff is that the respondent/defendant No. 3 ought to have been restrained from alienating the suit properties till disposal of suit. Not doing so, will lead to multiplicity of the proceeding causing irreparable loss to the plaintiff/appellant which fact was overlooked by the learned lower Court. Learned counsel prayed that the respondent/defendant No. 3 be restrained from alienating the suit properties till disposal of Civil Suit No. 22 A/2006. It was urged that although the Court below found a prima facie

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

case in favour of the appellant/plaintiff, the refusal to injunct the defendant No.3 from alienating the suit land till disposal of suit was contrary to law.

Having considered the submissions made by learned counsel for the appellant/plaintiff, I have perused the copy of plaint as also the copy of application filed under Order 39 Rule 1 & 2 of C.P.C. Para 12 and 14 of the said application is reproduced below

12) यह कि उपरोक्त तथ्यों से स्पष्ट है कि प्रतिवादी क्रमांक 3 ने वादग्रस्त भूमि को दुर्भावनापूर्वक कय किया है और उसके स्वरूप में परिवर्तन करने की कार्यवाही प्रारंभ कर दिया है ताकि इस वाद में होने वाले निर्णय को प्रभावित किया जा सके। प्रतिवादी क्रमांक 3 वादग्रस्त भूमि का स्वरूप परिवर्तित कर उसे अपनी अन्य भूमि के साथ मिला देना चाहता है और उसके पश्चात उसमें निर्माण आदि भी करना चाहता है।

(14) यह कि यदि प्रतिवादी क्रमांक 3 को वादग्रस्त भूमि में नाम दर्ज करवाकर उसके स्वरूप में परिवर्तन किए जाने से तथा उसमें निर्माण आदि किए जाने से निषेधित नहीं किया जावेगा तो वादों की बहुलता एवं प्रकरण में जटिलताएं उत्पन्न हो जावेगी।

अतः निवेदन है कि प्रतिवादी क्रमांक 3 को वादग्रस्त भूमि से संबंधित भूअभिलेखों में नाम दर्ज कर उसके स्वरूप में परिवर्तन किए जाने तथा उसमें किसी भी तरह से निर्माण आदि किए जाने से अस्थायी निषेधाज्ञा व्यादेश जारी किए जाकर निषेधित किए जाए।

I find that there are no pleadings that the defendant No. 3 is in any manner making an attempt to alienate the suit properties. Even in the application under Order 39 Rule 1 & 2 of C.P.C no relief is claimed to restrain the defendant No. 3 from alienating the suit properties. All that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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has been stated in para 12 is that the defendant No. 3 wants to add the suit properties to his other lands and to start the construction there on. The defendant No.3 gave a clear undertaking before the Court below that it shall not alienate any part of the suit property till disposal of suit which takes care of the apprehension of the learned counsel for the appellant. In view of clear undertaking given by the defendant No.3 for not alienating the suit land till disposal of suit, the balance of convenience was also in favour of refusal and not grant of injunction. Thus, the learned Court below rightly held that no irreparable injury would be caused to the appellant/plaintiff, if injunction was refused.

I am of the considered view that in the absence of a specific pleading or prayer, the relief claimed by the learned counsel for the appellant/plaintiff in this appeal cannot be granted. The defendant No.3 having already purchased the suit land prior to filing of suit by paying a heavy consideration and being in possession of the same, the grounds on which the learned lower Court has refused injunction are well reasoned and cannot be faulted with.

In the result, this appeal being devoid of merit is dismissed at the stage of admission. Accordingly, M.C.P. No. 284/2007 for grant of stay also stands dismissed.

Learned lower Court is directed to expeditiously dispose of the civil suit preferably within 6 months from today.

C.C. as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya

P.T.O.